

Original

a:/Ullman3/Complaint in Eastern District

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

M. ROBERT ULLMAN,	:	
and	:	Civil Complaint
CANOE MANUFACTURING CO.	:	
Plaintiff	:	
v.	:	
	:	
UNITED STATES OF AMERICA	:	
U. S. Department of Justice	:	
Office of Information and Policy	:	
United States Trustee	:	
U. S. Bankruptcy Court, Reading, Pa.	:	
Defendant	:	

COMPLAINT

IN ACCORDANCE WITH 5 USC 552 (a)(B)(E)(F) Public Information; Agency Rules, Opinions, Orders, Records and Proceedings (quoted on pg. 11-12 herein) and in regard to violation of the following statutes:

- a. 44 USC 3101 – records management by agency heads
- b. 44 USC 3102 – establishment of program of management
- c. 44 USC 3103 – transfer of records to records center
- d. 44 USC 3104 – certifications and determinations on transferred records
- e. 44 USC 3105 – safeguards
- f. 44 USC 3106 – unlawful removal, destruction of records,

the Plaintiff in this case is seeking an award not to exceed \$15 million to cover:

- a. pro se costs
- b. litigation costs

- c. legal fees associated with bankruptcy of Canoe Manufacturing Co.
- d. legal fees associated with state court actions
- e. legal fees associated with federal court actions.

I. THE ISSUE

In the bankruptcy (Chapter 11 and 7) of Canoe Manufacturing Co. Bankruptcy 87-04169 certain docket filings, **including docket no. 230** (dated 5/14/93) “Joint Response of Meridian Bank, Ezekiel Ketchum, and Joseph Jones, Esquire, to Motion of M. Robert Ullman for Relief from Abandonment” are MISSING FROM THE BANKRUPTCY FILE (ORIGINALLY ON FILE IN THE U. S. BANKRUPTCY COURT IN READING, PA.)

The following officials have conducted the search in response to a Freedom of Information request dated October 13, 2008 and have admitted that the document (#230) is not in the file of the Bankruptcy Court:

- A. March 26, 2009 from Janice Galli McLeod, Associate Director, Office of information and Privacy (Exhibit #1):

“I am affirming Eousa’s action on your request. Eousa conducted a search of the files and found no records responsive to your request.”

- B. February 19, 2009 – From Judge Stephen Raslavich, Chief Bankruptcy Judge, Eastern District of Pennsylvania (Exhibit #2):

“Upon retrieving the file, the Clerk of Court reviewed the contents of the docket, but was unable to locate the document you’ve requested.”

C. March 12, 2009 – Bankruptcy Judge Division, Administrative Office of the U. S. Court
(Exhibit #3):

“The Chief Judge informed you that the Clerk of Courts had retrieved the case file from the federal records center, but the file is incomplete and the document you requested is missing.”

D. November 6, 2008 – from Larry Wahlquist, Executive Office of U. S. Trustee, Office of General Counsel (Exhibit #4):

“After a reasonable search of agency records, we have been unable to locate the records you seek.”

THE UNITED STATES DEPARTMENT OF JUSTICE HAS THE RESPONSIBILITY
TO MAINTAIN THE FILES OF THE U. S. BANKRUPTCY COURT:

1. 44-USC 3101: *“The head of each federal agency shall make and preserve records.”*

2. 44-USC 3102: *“The head of each federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records.”*

3. 44-USC 3105: *“The head of each federal agency shall establish safeguards against the removal or loss of records.”*

“(2) The penalties provided by law for the unlawful removal or destruction of records (Publ. 90-260, Oct. 22, 1968.”

4. **44-USC 3106 – Unlawful removal, destruction of records:**

“The head of each federal agency shall notify the archivist of any ACTUAL

DESTRUCTION of records in the custody of the agency and shall initiate action through the Attorney General for recovery of records removed from the agency.”

II. THE HISTORY OF THE REMOVED RECORD, DOCKET #230 in the bankruptcy of Canoe Manufacturing Co.

A. April 7, 1993, **Docket #230** filed by M. Robert Ullman (Exhibit #)

1. Motion for Relief of Abandonment Order (of 7/24/90 and 3/11/92)
2. Motion to Amend Schedule of Assets
3. Motion to Remove Trustee

B. May 14, 1993 **Docket #230 (the missing document)**: “Joint Response of Meridian Bank, Ezekiel Ketchum and Joseph Jones, Esquire to Motion of M. Robert Ullman for Relief of Abandonment Order” JOINTLY FILED BY:

ATTORNEY RICHARD FEHLING, representing Meridian Bank and Ezekiel Ketchum
ATTORNEY ISLES COOPER, representing Attorney Joseph Jones. (See court record - Exhibit #6)

THE ANSWER WAS IN OPPOSITION TO THE ULLMAN/CANOE MOTION FOR RELIEF OF THE ABANDONMENT ORDER.

Attorney Richard Fehling is now Judge Richard Fehling, sitting in the same court that heard the Canoe bankruptcy and who had the responsibility to maintain the records.

C. June 9, 1993 ORDER OF COURT (Exhibit #7). “Order entered that motion filed by M. Robert Ullman requesting relief from abandonment is denied.”

D. July 8, 1993 ORDER of Court (Exhibit #8)

“Order entered that the joint request of Meridian Bank, Ezekiel Ketchum and Joseph Jones that sanctions be imposed against M. Robert Ullman is denied.”

III. THE CURRENT ISSUE

A. AS A RESULT OF THE ABANDONMENT ORDER, M. Robert Ullman and Canoe Manufacturing Co. brought an action against Attorney Joseph Jones and Meridian Bank in the Court of Common Pleas of Schuylkill County, Pa. on May 8, 1993, case no. S -759-1993, seeking damages in excess of 25 million dollars. (The case against Meridian Bank only was settled on May 8, 2003.)

B. MAY 16, 2005 - SECOND MOTION OF DEFENDANT JOSEPH H. JONES AND HIS LAW FIRM WILLIAMSON, FRIEDBERG & JONES FOR “SUMMARY JUDGMENT” (Exhibit #9)

“The court lacks subject matter jurisdiction over Canoe’s claims against Jones Defendant, and Plaintiff lacks standing to assert those claims.”

“At no point in the Bankruptcy Court proceedings did the Bankruptcy Court or the Chapter 7 Trustee abandon any alleged claim of Canoe against Joseph H. Jones, Esquire or Williamson, Friedberg & Jones.

“The present Schuylkill County Court of Common Pleas civil action was commenced by Canoe and Ullman on May 5, 1993. Although the Bankruptcy Court never abandoned claim of Canoe against Jones, Defendant, Canoe purports to bring such a claim in the present action.”

C. December 30, 2005 – Opinion/Order of Court (Judge J. Dolbin) (Exhibit #11)

“Defendants argue that Summary Judgment is warranted on the basis that when the Plaintiff was subsequently discharged in Bankruptcy Court there was NO abandonment by the Trustee of Plaintiff’s claim against Jones, so that the claim against Jones was an asset of the debtor (Plaintiff herein) that was in fact discharged. We hold that such a discharge without abandonment did in fact occur and that Summary Judgment in favor of the Defendant could be granted on those grounds.”

D. On May 11, 1993 in reply to the April 7, 1993 Ullman/Canoe Motion for Relief of the Abandonment Order, the Chapter 7 trustee, Alan Seltzer, wrote:

“On July 24, 1990 this court granted the Trustee’s Motion for Abandonment of the debtor’s alleged claims against Meridian Bank, Lawrence Pugh, Ezekiel Ketchum, and Joseph Jones.” (Exhibit #10)

IV. BRIEF HISTORY OF THE CANOE/ULLMAN DISPUTE AGAINST ATTORNEY JOSEPH H. JONES AND WILLIAMSON, FRIEDBERG & JONES

- A. Canoe Manufacturing Co. (established in 1951) was a manufacturer of boys’ jeans and in 1986 had 550 employees and a \$5.75 million line of credit from the Meridian Bank
- B. Canoe was negotiating a \$1 million increase (November, 1985) and a restructuring of the line of credit.
- C. Attorney Joseph H. Jones was a board member of Meridian Bank and predecessor

bank.

- D. Attorney Jones solicited the Canoe account to secure the \$1 million increase in line of credit and the restructuring of the line of credit.
- E. As a result of the effort of Attorney Jones, Meridian agreed to the entire line of credit increase and the loan restructuring and sent a Commitment Letter (standard Meridian practice) which spelled out the basic terms of a new restructuring agreement, including new collateral requirements including the additional cash advance. (letter dated March 31, 1986)
- F. Canoe and Ullman provided the new collateral on Apr. 18, 1986 when both parties signed a Restructuring Agreement.
- G. Within one week of the Apr. 18, 1986 agreement, Meridian refused to provide the new funds
- H. Attorney Jones CONCEALED the Commitment Letter.
- I. Canoe filed for bankruptcy (1) March 7, 1989 (Chapter 7), (2) August 18, 1987 (Chapter 11), and (3) was liquidated in July, 1989
- J. Meridian brought an action against Kaye and Robert Ullman in Berks County Court to collect \$3.5 million due by Canoe and guaranteed by the Ullmans. (Aug. 29, 1989 case no. 4049 AD, Berks County, Pa.)
- K. Ullman filed an objection to the Meridian action, in Berks County Court (9/13/89).
- L. Pursuant to the Berks County action, Attorney Jones was deposed (March 13, 1991) by Attorney Richard Fehling who represented Meridian Bank.
- M. Attorney Jones, upon question by Attorney Richard Fehling, revealed the original Commitment Letter that he had concealed.

- N. The revelation of the commitment letter was 5 years after Meridian had sent it to the office of Attorney Jones (a normal procedure).
- O. Ullman always knew of a verbal commitment by Meridian, but always stated (and testified under oath in Bankruptcy Court), prior to discovery, that the commitment was “verbal”.
- P. Meridian denied making a commitment to provide additional funds. (Oct. 2, 1989 Berks County action, Jan. 10, 1990 Bankruptcy Court)
- Q. Ullman/Canoe brought an action against Atty. Jones in Schuylkill County Court May 5, 1993.
- R. The initial defense of Atty. Jones was Statute of Limitations.
- S. On March 31, 2003 the court ruled in favor of the Jones defense (Statute of Limitations).
- T. The Superior Court of Pennsylvania ruled against the Statute of Limitations issue January 16, 2004 and ordered a new trial.
- U. On May 12, 2005 Jones submitted a Second Motion for Summary Judgment claiming that the Chapter 7 Trustee had never abandoned the Canoe claim against Atty. Jones.
- V. On December 30, 2005 the Schuylkill County Court ruled in favor of the Jones Second Summary Judgment motion. (Exhibit #11)
- W. Canoe’s EBIDT profit (before interest, depreciation and taxes):

1982	\$1,187,000
1983	1,212,218
1984	1,148,312

1985 203,350

1986 (3,542,762)

1987 (278,339)

In May-June of 1986, as a result of the lack of funding, Canoe disposed of all inventory and ceased marketing and merchandising its products.

- X. In July of 1989 the IRS held M. Robert Ullman as the responsible party for the non-payment of \$1.5 million in Trust Fund taxes by Canoe Manufacturing Co., the U. S. Department of Justice obtained a judgment against M. Robert Ullman.
- Y. In July of 1989 the Commonwealth of Pennsylvania held M. Robert Ullman as the responsible party for the non-payment of \$250,000 of state unemployment taxes owed by Canoe Manufacturing Co. A lien against M. Robert Ullman has been entered.
- Z. M. Robert Ullman is 80 years of age.

CONCLUSION

THE MISSING DOCUMENT #230 WOULD HAVE SUBSTANTIALLY ENHANCED THE ULLMAN/CANOE REPLY TO THE ARGUMENT BY JONES AND WILLIAMSON, FRIEDBERG & JONES REGARDING “ABANDONMENT” and would have made it much easier for the court to reject the Jones Summary Judgment motion.

The United States must be held responsible, in accordance with 5 USC (a)(4)(B)(E)(F), for the failure of M. Robert Ullman and Canoe Manufacturing Co. to obtain a favorable verdict in state court.

Both Judge Richard Fehling and Attorney Joseph Jones had reason to remove the missing

document; however, the Plaintiff has no evidence of such a removal. It is up to the U. S.

Attorney to investigate the removal of such document and proceed accordingly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Robert Ullman". The signature is stylized with a large, looped initial "M" and a cursive "Ullman".

M. Robert Ullman

July 9, 2009

5 USC 552 Public Information; Agency Rules

“(A) Each agency shall make available to public inspection as follows:

(B) On complaint, the District Court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency’s determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(E) the court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and

consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends."

CERTIFICATE OF SERVICE

It is hereby certified that this complaint mailed to the below listed parties by First Class mail on July 9, 2009 and that service of the motion was made upon the Department of Justice on July 9, 2009 by sending one copy thereof by First Class mail in an envelope properly addressed to them as follows:

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